IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/04/2003

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Criminal Original Petition No.6939 of 2003
and Criminal Original Petition No. 6940 of 2003

Leela Shankar @ Shankar .. Petitioner in both O.Ps.

-Vs-

The State, rep. by
The Deputy Superintendent
of Police, CBCID, Metro Wing,
Chennai. .. Respondent in both O.Ps.

Petitions filed under Section 482 of the Criminal Procedure Code,
praying for the reliefs as stated therein.

For petitioner : Mr.R.Sankarasubbu

For respondent : Mr.O.Srinath,
Govt. Advocate.

:O R D E R

Both the above petitions have been filed praying to call for the records in the committal order dated 28.2.2003 and the order made in Cr.M.P.974 of 2003 in P.R.C. No.55 of 2002 pending on the file of the XXIII Metropolitan Magistrate, Saidapet and quash the same as illegal.

2. The averments of the petitions are that the petitioner was arrested on 06.04.2002 for an alleged offence punishable under Sections 1 20(B) and 302 IPC; that the petitioner is in continuous detention and charge sheet was laid on 10.01.2003; that the committal court prepared copies and furnished the same to the petitioner on 21.01.2003 and on perusal of the materials, the petitioner found that the copies are not legible, readable and further several material documents were missing and above all, several material documents were in English, which language is unknown to the petitioner; that after perusing the material papers, he could not understand anything and hence he was not able to formulate his defence and after meticulous efforts, he was able to find three types of errors committed by the prosecution, viz., one set of copies are not legible, secondly, yet another type of material documents were missing and thirdly that the documents were in

English with which he is not conversant.

3. The petitioner would further pointing out the above mistakes, that he filed petitions under Section 207 Cr.P.C. to comply with the same in letter and spirit and particularly referred to the error apparent on the face of the prosecution papers that the requirement of serving the papers was not complied with and hence, Section 207 Cr.P. C. was infringed.

4. So far as Crl.O.P.No.6939 of 2003 is concerned, the petitioner would submit that the Magistrate, without complying with the procedures contemplated under section 207 Cr.P.C., had made unwarranted comments against the petitioner and other accused; that the petitioner and the remaining accused are in jail and they are willing to cooperate in the conduct of the trial; that to conduct the trial, the accused is required to understand the case and arrange their defence; that the learned Magistrate had committed

grave miscarriage of justice by turning down the plea of the accused and hence the committal order dated 28.2.2003 is bad in law and infringes the fundamental fairness in criminal prosecution.

5. So far as Crl.O.P.No.6939 of 2003 is concerned, the petitioner would submit that the Magistrate ignored the plea and turned down the request of the petitioner in limine, without assigning any valid reason and without even ordering notice to the prosecution; that the Magistrate committed a grave error in refusing to comply with the elementary principles of natural justice that the accused should be furnished with prosecution papers and hence the order of the Magistrate dated 28.02.2003, without even ordering notice to the prosecution, is arbitrary exercise of power; that therefore, the impugned order dated 28 .2.2003 is total abuse of process of the Code and deserves to be quashed.
6. Heard the learned counsel for the petitioner and the learned Government Advocate on the Criminal side in both the above matters.

7. On the part of the learned counsel for the petitioner, he would not only reiterate the facts pleaded in the above Criminal Original Petition but also would cite four judgments, the first one reported in AIR 1954 SC 700 (Purshottam Jethanand V. The State of Kutch), the second one reported in AIR 1957 SC 623 (Gurbachan Singh V. State of Punjab), the third one reported in AIR 1964 SC 286 (Noor Khan V. State of Rajasthan) and the 4th one reported in 1997-1 L.W. (Crl.) 28(In the matter of Welding Kumar V. State by D.S.P. CBI/SIC).

8. So far as the first judgment cited above is concerned it has been held:
"the statutory right of the accused to be furnished with statements relating to the trial in respect of the offence .....the right which the accused has got of obtaining copies of the statements made by the witnesses during investigation is very valuable right ad the wholesale refusal to grant the same will be a serious irregularity which would vitiate the entire trial."

9. In the second judgment cited above it has been held:

"when it is very clear from the new sub section (4) that when the police officer after completing the investigation sends his report to the Magistrate, copies of the statements and documents referred to should be furnished to the accused . The object of this provision is to put the accused on notice of what he has to meet at the time of the inquiry or trial."

10. In the third judgment cited above it has been held:
"The provisions of S.162 provide a valuable safeguard to the accused and denial thereof may be justified only in exceptional circumstances."

11. In the last judgment cited above it has been held:

"that the object of behind S.207 is to see that all documents necessary to give all the information to accused for conduct of defence, are furnished in advance."

12. On the part of the learned Government Advocate he would submit that it is a case of murder and all the documents necessary for the trial to be held and relied upon by the prosecution have been supplied in the manner required by law, particularly under Section 207 of the Cr.P.C.; that however, with ulterior motives the petitioner has filed the application as though they raise the plea in a case of preventive detention and it is unsustainable; that when the case has been investigated into and the charge sheet has been filed, instead of getting ready to conduct the defence case at the time of trial, on such untenable and flimsy reasons no such relief of quashing the entire proceedings in the PRC case could be imagined. Likewise, the other application in C.M.P.No.974 of 2003 has also been properly dealt with and orders have been passed by the trial Court in accordance with law and

there is no purpose or obligation attached to in these petitions and they deserve only to be dismissed and would pray to dismiss both the above Criminal Original Petitions.

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what could be assessed from out of both the Criminal Original Petitions filed on the part of the petitioner therein is the first Criminal Original Petition in 6939 of 2003 has been filed by the 10th accused in the case in PRC No.55 of 2002 on allegations that the charge sheet was laid on 10.1.2003; that the copies were furnished on 22.1.2003 which are not legible, readable and several material documents are missing and many other documents are in English language with which the petitioner is not conversant to and for these errors the object of serving the papers were not complied with as required under Section 2 07 of the Cr.P.C. and hence on these grounds would pray for quashing the entire proceedings initiated in PRC No.55 of 2002 on the file of XXIII Metropolitan Magistrate, Saidapet including the committal order dated 28.2.2003.

14. The other application in Criminal Original Petition No.6940 of 2003 has also been filed by the same petitioner in C.M.P.No.974 of

2 003 in the above PRC No.55 of 2002 and this application has been filed under Section 207 of the Cr.P.C. and the orders have been passed by the trial Court dated 28.2.2003, the same petitioner has raised the same points and the Magistrate has very clearly stated in his order that the copies supplied on the part of the prosecution in compliance requires of Section 173(7) of Cr.P.C. have been verified and found legible and only thereafter on checking up everything the copies have been supplied and there is no room for any such question to be raised on such grounds raised here before and moreover the accused have appointed their counsel to conduct their case and therefore copies of certain documents being in English is not in any manner going to prejudice the interest of the accused particularly in view of the fact that the very petition filed on the part of the petitioner was only in English and therefore this cannot also be completed as a valid point either for quash or for any other relief and that these applications have been filed only to protract the trial procedures and on such valid ground would firmly reject both the above applications filed by the petitioner.

15. Neither the petitioner has raised valid points nor does the petitioner seem to have been deprived of any of his legal rights in the procedures that are followed preparatory to the trial. It is not only the points raised but also that judgments cited are general in nature without any application to the facts of the case in hand and therefore, on valid reasons assigned, the lower Court viz., the XXIII Metropolitan Magistrate, Saidapet, Chennai has passed the orders and this Court is not able to find anything inconsistent or infirm or patent errors or denial of proper opportunity and therefore, both the above Criminal Original Petitions filed testifying the validity of the orders passed by the Magistrate in the manner aforementioned are only without merit and they became liable to be dismissed.

In result,
(i) both the above Criminal Original Petitions do not merit acceptance and they are dismissed as such;
(ii) the order dated 28.2.2003 made in Cr.M.P.No.974 of 2003 in PRC No.55 of 2002 passed by the Court XXIII Metropolitan Magistrate, Saidapet, Chennai is hereby confirmed.
(ii) Consequently, Crl.M.P.Nos.2498 and 2499 of 2003 are closed.

Index:Yes
Internet:Yes
gr.
To
1. The Deputy Superintendent of Police, CBCID, Metro Wing, Chennai.
2. The XXII Metropolitan Magistrate, Saidapet, Chennai.
3. The Public Prosecutor, High Court, Madras.